Putting Financial Interests Over the Interests of the Clients

Summary

The National Ethics Council ("Council" or "NEC") ruled that an AIA Member violated Rules 3.201 and 4.103 of the Institute's 2012 Code of Ethics and Professional Conduct ("Code of Ethics") in connection with a Member knowingly putting their own financial interests over the interests of the clients.

All initials, names, dates, places, and gender references in this decision have been changed.

References

2012 Code of Ethics and Professional Conduct,

Canon II, Obligations to the Public

Rule 2.104 Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

Commentary: This rule addresses serious misconduct whether or not related to a Member's professional practice. When an alleged violation of this rule is based on a violation of a law, or of fraud, then its proof must be based on an independent finding of a violation of the law or a finding of fraud by a court of competent jurisdiction or an administrative or regulatory body.

Canon III, Obligations to the Client

Rule 3.103 Members shall not materially alter the scope or objectives of a project without the client's consent.

Rule 3.201 A Member shall not render professional services if the Member's professional judgment could be affected by responsibilities to another project or person, or by the Member's own interests, unless all those who rely on the Member's judgment consent after full disclosure.

Commentary: This rule is intended to embrace the full range of situations that may present a Member with a conflict between his interests or responsibilities and the interest of others. Those who are entitled to disclosure may include a client, owner, employer, contractor, or others who rely on or are affected by the Member's professional decisions. A Member who cannot appropriately communicate about a conflict directly with an affected person must take steps to ensure that disclosure is made by other means.

Rule 3.301 Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the Members' services, nor shall the Members state that they can achieve results by means that violate applicable law or this Code.

Commentary: This rule is meant to preclude dishonest, reckless, or illegal representations by a Member either in the course of soliciting a client or during performance.

Canon IV, Obligations to the Profession

Rule 4.103 Members speaking in their professional capacity shall not knowingly make false statements of material fact.

Commentary: This rule applies to statements in all professional contexts, including applications for licensure and AIA membership.

Rule 4.201 Members shall not make misleading, deceptive, or false statements or claims about their professional qualifications, experience, or performance and shall accurately state the scope and nature of their responsibilities in connection with work for which they are claiming credit.

Commentary: This rule is meant to prevent Members from claiming or implying credit for work which they did not do, misleading others, and denying other participants in a project their proper share of credit.

Findings of Fact

The Parties

The Complainants are residents in Purple City, Country B, who retained Respondent, of ABC Architecture Firm, a Purple City-based architectural firm, as architect for a new residence in Purple City.

Respondent is a registered Architect member in Purple City and in Yellow City, State A, Country A. They are the principal in the Purple City-based firm of ABC Architecture Firm, and in the Yellow City-based firm of XYZ Architecture Firm. In addition to AIA membership, they hold a membership in the Purple City Institute of Architects.

Chronology of Events

A chronology of events has been drawn from the Amended Complaint, from Complainants' testimony, and from other evidence. In the Response, Respondent did not offer a point-by-point rebuttal of Complainants' allegations. Rather, they offered copies of: (a) a Client/Project Information sheet ("Client/Project Information Sheet") that they had provided to the Complainants and which they had completed at the start of their relationship; and (b) a "Judgment" rendered by the Country B Magistrates' Court.

The record in this case reflects the following sequence of events:

- In January 2011, Complainants contacted the Respondent to design their new residence in Purple City, Country B.
- In February 2011, the Respondent gave Complainants the Client/Project Information sheet, which they completed. This sheet included general terms and conditions for the project. Around this time, email correspondence between the Parties established that the project would be accomplished in two phases, for fees with ranges of $20,000–$25,000 for the first phase (referred to below as the "Planning Phase"), and $10,000–$12,000 for the second phase (referred to below as the "Building Control Phase"). In addition, it said:

  > Depending on the project, ABC Architecture Firm may also collaborate with its sister firm, XYZ Architecture Firm, in Yellow City, State A. We find this partnership a very efficient and cost-effective way of delivering the best results for our clients. Their rates are included in the hourly rates below.

- During April of 2011, the Respondent submitted conceptual plans for a new 5,300 square-foot residence to Complainants.
- In July 2011, the Respondent submitted documents to the local Department of Planning for a residence with a gross floor area of approximately 5,600 square feet. (The documents also showed an "Area of Hard-surfacing" of a little more than 8,200 square feet.)
- In February 2012, the Department of Planning approved the application for the 5,600 square-foot residence. The second phase of the work then commenced.
- Complainants have acknowledged that the total cost of the first phase of the project came in at a little more than $23,000—well within the quoted $20,000—$25,000 range originally given by Respondent for that phase. Complainants paid each of the invoices for the first phase within a month of receipt. The first invoice sent by ABC Architecture Firm to Complainants in the second phase, for services rendered in February 2012, included the first reference to the XYZ Architecture Firm.
- In an invoice dated March 31, 2012, and received by Complainants in April, ABC Architecture Firm billed charges totaling a little more than $17,600. The invoiced charges exceeded those earlier estimated by the Respondent at $10,000 to $12,000 for the second phase. Complainants noticed that time spent by XYZ Architecture Firm was included in the ABC Architecture Firm

invoices and requested an explanation from the Respondent for the resulting charges.

- In April 2012, the Respondent submitted an application for a building permit for an approximately 5,600 square-foot residence to the Department of Planning.
- In May 2012, a building permit was issued.
- In June 2012, the Respondent met with Co-worker of ABC Architecture Firm to discuss potential modifications to the plans. In an email to the Respondent soon afterwards, Mr. Complainant noted: "As you know, we paid the last bill for $17k, even though we never had a chance to discuss our concerns with you."
- In August 2012, Complainants received four invoices—dated from April 30 to June 30—for a total combined amount of more than $25,400. (The delay in Complainants' receipt of these invoices apparently resulted at least in part from a change in Complainants' address.) These invoices included amounts for work by XYZ Architecture Firm, and the amounts shown pushed the total charges even higher over the earlier estimate of $10,000 to $12,000 for the second phase. In a letter dated August 7, from Complainant to the Respondent, Complainants agreed to pay some of the newly billed amounts but declined to pay more than $13,000 of them until they received clarification and itemization of the underlying charges.
- After a series of emails in September 2012, the Respondent responded to Complainants' questions in October. They cited a variety of factors as justification for exceeding the quoted fee and provided some degree of itemization of the underlying charges.
- In January 2013, construction began on the residence, with the Respondent serving as the general contractor.
- In June 2013, Complainants received a demand letter from an attorney for ABC Architecture Firm "in regard to the collection of their accounts outstanding." Complainants sent a response to that letter on June 18, 2013, stating that they did not intend to pay "for the remainder of the unauthorized work."
- In October 2013, Complainants received a second letter from ABC Architecture Firm's attorney, alleging that Complainants were responsible for additional charges in excess of original estimates based on various factors, including "numerous changes requested by you."
- Between April 2014 and May 2017, the parties were engaged in litigation brought by the Respondent in Country B Magistrates' Court. Respondent's claim against Complainants was ultimately dismissed, as was Complainants' counterclaim against Respondent.
- Construction on the project concluded around the second half of 2015.

The Complaint

As reflected in the Chronology of Events above, in early 2011, Complainants engaged the Respondent to design a new residence. This was designed to progress in two phases. The first phase was the design phase (referred to as the "Planning Phase" in Country B), and the second was the construction documents phases (referred to as the "Building Control Phase" in Country B).

The Respondent invoiced the Complainants for fees that exceeded the Respondent's original estimated amount during the Building Control Phase, including time spent by XYZ Architecture Firm, the Respondent's Country A firm working on the Complainants' project. The Complainants allege that Respondent engaged the Respondent's Country A-based architecture firm without their consent to do work on the Respondent's behalf, to the Respondent's benefit. When the amounts on the invoices were questioned, Respondent allegedly failed to provide adequate backup and explanation for the charges. The Complainants refused to pay for these services until explanation was received. When the invoices remained unpaid, the Respondent initiated proceedings against the Complainant in the Country B Magistrates' Court for outstanding fees and interest, plus debt recovery fees.

In short, the central allegations of the Complaint are that the Respondent mischaracterized the nature of the services they provided to justify increased billing for the design documents, that the Respondent misled Complainants regarding the involvement of the Country A firm, and that the Respondent failed to provide explanatory information to the Complainants when requested to validate the increased charges, thereby violating one or more of the Referenced Rules.

The Response

Although Respondent has failed to provide a detailed response to Complainants' allegations, the Respondent implicitly denies the allegations stated in the Complaint. The Respondent appears to assert that Complainants were given notice that the Respondent might engage with the Country A firm as stipulated in the standard Client/Project Information Sheet provided to Complainants when they engaged the Respondent for architectural services.

Respondent further asserts that Complainants should accept the Country B Magistrates' Court Judgment, as the Respondent has done, which dismissed both the Respondent's claim against Ms. Complainant and Mr. Complainant for payment of fees plus interest and debt recovery costs and their counterclaim against the Respondent for unjust enrichment.

Conclusions

Burden of Proof

Under Section 5.13 of the NEC Rules of Procedure, a Complainant has the burden of proving the facts upon which a violation may be found. In the event the Complainant's evidence does not establish a violation, the complaint is dismissed.

Rule 2.104

Rule 2.104 of the 2012 Code of Ethics states:

> Members shall not engage in conduct involving fraud or wanton disregard of the rights of others.

The Commentary to Rule 2.104 states:

> *This rule addresses serious misconduct whether or not related to a Member's professional practice. When an alleged violation of this rule is based on a violation of a law, or of fraud, then its proof must be based on an independent finding of a violation of the law or a finding of fraud by a court of competent jurisdiction or an administrative or regulatory body.*

In their Complaint, Mr. Complainant and Ms. Complainant allege that Respondent violated Rule 2.104 "when the Respondent attempted to conceal what the Respondent and the Respondent's firm had done, by misrepresenting and suppressing pertinent facts and other information."

Rule 2.014 may be applied in either of two ways, the first being a demonstration of fraud, the second being proof of wanton disregard for the rights of others. With regard to the first prong of Rule 2.104, "conduct involving fraud," there has been no independent finding of fraud by a court of competent jurisdiction or an administrative or regulatory body, as the Commentary directs. The first prong is therefore inapplicable here.

Referencing the second prong of Rule 2.104, Ms. Complainant clarified the basis for Complainants' claim at the hearing:

> I think we had a right to have an architect who told us the truth. – Was transparent in terms of the work that they were going to perform. How much they were going to charge us for that work and, you know, we were—if there were going to be any additional costs involved. And by essentially failing to tell us about the retention of the XYZ Architecture Firm and all those additional fees that they say were incurred, it was a wanton disregard for our right to have, you know, truthful information.

The Complainants' Counsel in this case, elaborated at the hearing. For Rule 2.104 (as well as Rules 4.103 and 4.201), Counsel asserted, "the complaint is that the Respondent attempted to conceal what the Respondent and the Country A firm [XYZ Architecture Firm] had done by misrepresenting and suppressing pertinent facts and other information." More specifically, Counsel maintained that:

- Respondent failed to make appropriate disclosures about the role of the XYZ Architecture Firm and the work it did.

- In the civil litigation in Country B, Respondent allegedly fabricated a claim that the scope of the project had increased dramatically (from a 2,000 square-foot to a 7,000 square-foot residence) in order to justify the Respondent seeking an order for payment of fees for the "unauthorized work of third-party firm [XYZ Architecture Firm]."
- Respondent did not fully disclose their professional obligations arising out of their professional affiliations (including as a member of the AIA) and showed wanton disregard for the obligations arising out of those professional affiliations.

The NEC has previously described "wanton disregard" as conduct that creates a "high degree of risk that the Complainant would be adversely affected." (*See* NEC Decision 2005-15.) The evidence of record shows that Respondent was not respectful of the Complainants in providing complete contractual information. In addition, the Respondent was not clear about the Respondent's intention to have the Building Control documents prepared by architects in the Country A firm. Respondent also did not provide a full and accurate accounting for billings to Complainants' account and was inattentive to the request by the clients to discuss details of the invoices.

Nonetheless, Respondent did communicate, however minimally. The Respondent had mentioned the possibility of servicing Complainants through the Respondent's affiliation with XYZ Architecture Firm as disclosed in the Client/Project Information Sheet. Moreover, ultimately, the Respondent delivered the project. Taken together, while the Respondent's failings show an unfortunate lack of professionalism on the part of the Respondent, they do not amount to "wanton disregard" of the Complainants' rights under Rule 2.104.

The NEC concludes that the Complainants have not met their burden to prove that the Respondent violated Rule 2.104.

Rule 3.103

Rule 3.103 of the 2012 Code of Ethics states:

> Members shall not materially alter the scope or objectives of a project without the client's consent.

There is no Commentary to Rule 3.103.

Despite testimony at the hearing and also before the Country B Magistrates' Court that the Respondent misrepresented the size of the project and that the Country A firm was engaged without the clients' knowledge and consent, no evidence was presented that the Respondent materially altered the scope or objectives of the project without the Complainants' knowledge and consent. Ms. Complainant herself testified:

> We have nothing that says the Respondent changed the scope. But if the Respondent says that they retained someone, another firm and that they went from two to seven or just the retention of that other firm, in my mind they altered the scope of the project.

The NEC does not agree with the Complainants that Respondent's reliance on XYZ Architecture Firm to do some of the work on the project amounted to a change in scope. Rather, that sort of action would merely be a change to the *delivery* of the project, and that does not fall within the scope of Rule 3.103.

The NEC concludes that the Complainants have not met their burden to prove that the Respondent violated Rule 3.103.

Rule 3.201

Rule 3.201 of the 2012 Code of Ethics states:

> A Member shall not render professional services if the Member's professional judgment could be affected by responsibilities to another project or person, or by the Member's own interests, unless all those who rely on the Member's judgment consent after full disclosure.

The Commentary to Rule 3.201 states:

> *This rule is intended to embrace the full range of situations that may present a Member with a conflict between his interests or responsibilities*

> *and the interest of others. Those who are entitled to disclosure may include a client, owner, employer, contractor, or others who rely on or are affected by the Member's professional decisions. A Member who cannot appropriately communicate about a conflict directly with an affected person must take steps to ensure that disclosure is made by other means.*

The Complainants allege that the Respondent violated this Rule when the Respondent engaged XYZ Architecture Firm—the Country A firm in which the Respondent had a financial stake—and sought to benefit from that firm's billings, looking out for the Respondent's own interests rather than those of the clients. They further assert that the Respondent failed to properly disclose the alleged conflict to the Complainants or seek their consent.

The Client/Project Information Sheet provided to the Complainants by Respondent stated in part:

> Depending on the project, ABC Architecture Firm may also collaborate with its sister firm, XYZ Architecture Firm in Yellow City, State A. We find this partnership a very efficient and cost-effective way of delivering the best results for our clients. Their rates are included in the hourly rates below.
>
> Our hourly rates do not include reimbursable expenses. Reimbursable expenses include but are not limited to: telephones; fax; courier charges; printing; plotting; photocopying; and government fees for submitting documents on your behalf.
>
> The following are our hourly rates for 2011:
>
> Principal/Senior Architect=$155.00–$173.00/hr
>
> Architect/Senior Technologist=$116.00–$142.00/hr
>
> Architectural Intern=$80.00/hr
>
> Clerical/Student=$50.00–$71.00/hr
>
> - some projects may be billed by percentage of construction cost or a fixed fee
> - consultants arranged for and paid by ABC Architecture Firm on your behalf are charged at cost plus 15%
> - architectural consultants from XYZ Architecture Firm arranged for and paid by ABC Architecture Firm are charged at cost
> - our conditions and charges tend to follow the IBA standard

The Client/Project Information Sheet also asked Complainants to check a box showing whether Complainants wished ABC Architecture Firm to: (a) have consultants bill them directly; or (b) "include consultants invoices with 15% mark up with ABC Architecture Firm invoices." Complainants selected the first option, thus choosing to avoid the 15 percent markup that would have applied under the second option.

If the fees were in fact marked up, this action would have contradicted what was stated in the Client/Project Information Sheet completed by the Complainants, pitting the Respondent's financial interests against the interests of the clients to benefit from the efficiencies promised in the Client/Project Information Sheet.

Complainants assert Respondent—in testimony before the Magistrates' Court—revealed a markup in XYZ Architecture Firm's time. Complainants offered these statements in their amended Complaint, and provided testimony to support them:

> . . . Respondent also conceded on the stand that the Respondent's Country A firm's fees were marked up by the Respondent's Country B firm (ABC Architecture Firm) by 10–15 percent (the Respondent said they were not sure which figure was correct) despite our expressly opting to be billed by consultants directly so as to avoid paying ABC Architecture Firm a surcharge.
>
> . . . Notably, since Respondent (along with two others) are the sole principals of XYZ Architecture Firm, this clandestine arrangement meant that they stood to actually profit from the 10–15 percent markup *personally* despite our having elected to pay all consultants directly.

The Respondent provided a very limited Response to the Complaint and failed to provide any Response at all to the Amended Complaint. This occurred even after the Respondent received notification of

the Respondent's failure to comply with the requirements of Section 4.2 of the NEC Rules of Procedure, requesting additional information, from the Hearing Officer. The letter stated:

> Dear Respondent:
>
> On May 11, 2018, you were notified by letter that the Hearing Officer requested additional information pertaining to your response. Having received no additional information by August 31, 2018, your previously submitted Response is now considered complete. . . .

Accordingly, under Section 4.3 of the Rules of Procedure, the NEC may take the allegations asserted by the Complainant as true. Even without the application of Section 4.3, however, Respondent's failure directly to contest Complainants' assertions on conflict of interest would be damaging to the Respondent. Indeed, if anything, the scant evidence they have offered undermines the Respondent's case on this point.

The Client/Project Information Sheet that the Respondent provided as part of their Response to the Complaint specifically states that "architectural consultants from XYZ Architecture Firm arranged for and paid by ABC Architecture Firm are charged at cost." Moreover, as noted above, the Client/Project Information Sheet shows that the clients had elected to be billed directly by any consultants to the project without markup. It was to the Respondent's advantage to obfuscate the communications and billing statements related to the Country A firm's work in order to add more hours and related surcharges to the clients' bills. However, the NEC finds insufficient evidence to determine that the fees associated with XYZ Architecture Firm were marked up by Respondent.

According to Rule 3.201, any professional or personal conflict should have been fully disclosed to the Complainants, and their consent to the conflict should have been obtained. To this point, the Client/Project Information Sheet itself told clients to "[p]lease discuss the consultants required for your project with the project runner." While it might have been inferred from the Client/Project Information Sheet that collaboration with XYZ Architecture Firm, the Country A firm, was possible on this project, the Respondent failed to disclose to the clients that this would be the case, and never offered them an opportunity to discuss XYZ Architecture Firm's participation before it began.

The Respondent's failure to appropriately communicate and provide detailed information about the collaboration further demonstrates that the Respondent's professional judgment was influenced by the Respondent's partnership in both firms. For these reasons, the NEC finds that the Respondent had a personal conflict as to the Respondent's interest in employing services of the two firms simultaneously in this case. The NEC finds that full advance disclosure to the Complainants and their consent were required by Rule 3.201 in this case.

The NEC concludes that the Complainants have met their burden to prove that the Respondent violated Rule 3.201.

Rule 3.301

Rule 3.301 of the 2012 Code of Ethics states:

> Members shall not intentionally or recklessly mislead existing or prospective clients about the results that can be achieved through the use of the Members' services, nor shall the Members state that they can achieve results by means that violate applicable law or this Code.

The Commentary to Rule 3.301 states:

> *This rule is meant to preclude dishonest, reckless, or illegal representations by a Member either in the course of soliciting a client or during performance.*

In their Complaint, Complainants allege:

> . . . Respondent and their Country A firm XYZ Architecture Firm violated Rules 3.103 and 3.301 when the Respondent retained them without our knowledge or consent and thereafter failed to advise us that the fees billed for the building control phase (Phase II) or our project would be significantly higher than the Respondent had quoted. . . .

The Complainants essentially allege that the Respondent made promises about what the Respondent could achieve under an estimated fee and continued to invoice for work in excess of that estimate, without sufficient communication or

discussion explaining why the time and costs would be exceeded and without regard to the Complainants' budget and schedule.

The Complainants expected honest, clear, and timely communication about the progress of their project and the anticipated costs. The materials submitted and Complainants' testimony demonstrated that the Respondent was not successful in setting appropriate expectations for the work with the clients. Respondent's communications with the client consistently minimized the complexity of the phases of the work and underestimated the time required to complete the documents. Other responsibilities took Respondent's focus away from the Complainants' project, and the Respondent failed to communicate clearly or to provide regular and timely updates on the project.

Those facts, however, are not in themselves sufficient to establish a violation of Rule 3.301. They do not suggest that Respondent stated that the Respondent could achieve results by means that violated applicable law or the Code of Ethics. That being the case, there could be no violation of the Rule without proof that Respondent *intentionally or recklessly* misled the clients about the results that could be achieved through the Respondent's services. The NEC finds the evidence submitted insufficient to establish that the Respondent intentionally or recklessly misled the Complainants.

The NEC concludes that the Complainants have not met their burden to prove that the Respondent violated Rule 3.301.

Rule 4.103

Rule 4.103 of the 2012 Code of Ethics states:

> Members speaking in their professional capacity shall not knowingly make false statements of material fact.

The Commentary to Rule 4.103 states:

> *This rule applies to statements in all professional contexts, including applications for licensure and AIA membership.*

Stated somewhat differently, Complainants must establish that:

(a) Respondent made a statement;

(b) Respondent made it in their professional capacity;

(c) The statement was a statement of material fact;

(d) The statement was false; and

(e) Respondent knew the statement was false.

Unless each of these elements is satisfied, there can be no violation of Rule 4.103.

Complainant's Allegations. As with Rules 2.104 and 4.201, Complainants allege that Respondent violated Rule 4.103 when "Respondent attempted to conceal what they and their Country A firm had done, by misrepresenting and suppressing pertinent facts and other information." Key to this allegation is the assertion that Respondent claimed that their firm had "completed additional works on behalf of the defendants which included but was not limited to an increase in the size of the dwelling from approximately 2,000 square feet to approximately 7,000 square feet . . . ."

This is clearly reflected in the "Particulars of Claim" filed on behalf of ABC Architecture Firm in the case before the Country B Magistrates' Court:

2. By written agreement between the Plaintiff and the Defendants entered into on or about the 1st January 2011, *the Plaintiff agreed to and did provide architectural services involving plans and drawings for a new 2,000 sq. ft. dwelling* with a pool situate on land located at Lot XX, XXX Estate, Purple City.

...

4. The *Plaintiff completed additional works on behalf of the Defendants which included but was not limited to an increase in size of the dwelling and associated Architectural Drawings from approximately 2,000 square feet to approximately 7,000 square feet* which included roof changes, a change in the material for the pillars and walls and the relocation of a water tank.

In the circumstances of this case, the NEC finds that these can be taken as statements by Respondent.

Complainants' Testimony. Complainants' testimony at the hearing in this case squarely contested

Respondent's statements before the Country B Magistrates' Court:

MS. COMPLAINANT: So the drawings I gave to them, you know, just sketches I had drawn up to show them, generally the size of the house. I was trying to get something that fit within the 4[,000] to 5,000 square foot range because that is what we had six months earlier gotten bank approval for, to build a four [thousand] to 5,000 square foot home and we had provided them with the footprint.

HEARING OFFICER: And they had approved?

MS. COMPLAINANT: They approved the loan based on the size. So I went to them we had a discussion of how large of a house, you know, what's the square footage you're looking for. I told them four [thousand] to 5,000 square feet and had presented them with the drawing so they could see the general idea of, you know, what we were thinking in terms of what the house would look like, where the rooms would be, the sizes of the rooms.

So we assumed all along that they would do something within the 4[,000] to 5,000 square-foot range and then the very first—so we got what they called a sketchy, sketch that didn't have any dimension on it. They said don't pay too much attention to it. We will send you something more detailed shortly.

Then our first set of plans that they sent were for 5,300 and something. I can't remember the exact square footage. And they send an e-mail asking is the square footage okay because they knew that they had—well, this is my thing they knew that they had gone over it by that 300 square feet and I think in my response, which is included in here, I said, yeah, it looks generally okay but you have to add something because we were thinking about a gym.

HEARING OFFICER: You had some requirements for some other rooms?

MS. COMPLAINANT: Exactly. So the change went from—it was 5,300 to 5,600, 5,607?

HEARING OFFICER: And that was the size, the 5,600 some odd square feet was the size—

MR. COMPLAINANT: Was submitted—

MS. COMPLAINANT: Submitted to planning for the first phase.

HEARING OFFICER: So the documents they prepared for that house were, in fact, for a 5,600 square-foot house, correct?

MR. COMPLAINANT: Correct.

Additional Evidence. The other evidence of record (including that summarized in the Findings of Fact above) supports Complainant's testimony on this point. It shows:

- In an email to Ms. Complainant in February 2011, the Respondent commented, "At the building permit stage the layout and look of the building would be set and cannot change much."
- During April of 2011, the Respondent submitted conceptual plans for a new 5,300 square-foot residence to Complainants.
- In July 2011, the Respondent submitted documents to the local Department of Planning for a residence with a gross floor area of approximately 5,600 square feet. (The documents also showed an "Area of Hard-surfacing" of a little more than 8,200 square feet.)
- In February 2012, the Department of Planning approved the application for the 5,600 square-foot residence. The second phase of the work then commenced.
- In April 2012, the Respondent submitted an application for a building permit for a 5,607 square-foot residence to the Department of Planning.
- In May 2012, a building permit was issued.

None of this evidence suggests that the original design for the residence sized it at 2,000 square feet, or that later designs showed a residence of 7,000 square feet.

Respondent's Arguments. Because of Respondent's decision to limit their participation in this case, we are largely left to construct the arguments they might pose here.

When the attorney for ABC Architecture Firm contacted Complainants on October 7, 2013, they asserted this claim against them:

The claim at present is for fees incurred by our client as a consequence of site conditions and numerous changes requested by you which entailed additional time being expanded on satisfying your needs, including but not limited to:

- Increase in size from approx. 2,000 square feet to approx. 7,000 square feet
- Requirement for detailing not normally required due to location of house on cave site
- Roof changes
- Change in materials for pillars and wall
- Relocation of water tank

Complainants promptly disputed the claim.

As noted above, when ABC Architecture Firm's "Particulars of Claim" was subsequently filed in the Country B Magistrate's Court, it included the statements quoted above about the supposed increase of the designed residence from 2,000 square feet to 7,000 square feet.

In "Plaintiff Submissions" to that court, Respondent essentially represented that the "sketch was originally a two-level sketch, which ended up with three levels." The Respondent testified that "the average and comfortable house is 2,000 to 2,500 square-feet." The Respondent added that the square footage of the planning applications was 5,607 square feet, but that the total design area was 8,247 square feet, "including decks, balconies, driveways and all hard surfaces."

In their Complaint in this case, the Complainants stated, regarding the Respondent's testimony in the Magistrates' court, "... Respondent conceded that the drawing not only had dimensions on it and that the first level alone showed more than 2,000 square feet. The Respondent also asserted that what the Respondent meant by 2,000 square feet was not the total size of the project but the 'footprint' of the project."

Findings and Conclusions Concerning Complainants' Claim Under Rule 4.103. On balance, the record viewed as a whole in this case indicates that the Respondent knew from the beginning of the project that the Respondent was designing a house larger than 2,000 square feet, and that the actual size would be in the range of 5,000 square feet. The Respondent later statements inflating the size to 7,000 square feet or more did not accurately reflect the actual situation.

The NEC finds:

(a) *Respondent made this statement* in the Particulars of Claim filed on behalf of ABC Architecture Firm in the above-described case before the Country B Magistrate's Court:

> The Plaintiff completed additional works on behalf of the Defendants which included but was not limited to an increase in size of the dwelling and associated Architectural Drawings from approximately 2,000 square feet to approximately 7,000 square feet which included roof changes, a change in the material for the pillars and walls and the relocation of a water tank.

(b) *He made the statement in their professional capacity*, both as the architect for the project that is the subject of this case, and as a principal of plaintiff ABC Architecture Firm as it submitted its Particulars of Claim to the Country B Magistrates' Court.

(c) *The statement was a statement of material fact.* If this and similar statements were accepted as true, and the project had originally been a 2,000 square-foot project that was increased to 7,000 square feet, that would have affected the amount in fees that the Respondent could have reasonably charged the clients, and whether the project was executed through the use of XYZ Architecture Firm due to its complexity or scope. It would also have had the strong potential to influence the outcome of the dispute that the parties had over the amount of fees that were in fact charged for the project.

(d) *The statement was false.* The evidence in this case shows that the size of the residence to be designed in this case was originally envisioned at approximately 4,000 to 5,000 square feet. Ample evidence, including an application submitted by Respondent to the Country B

> Department of Planning, showed the residence's gross floor area to be 5,607 square feet. Depicting the area of hard-surfacing as more than 8,000 square feet (in the application to the Department of Planning and in other statements) does not change the fact that the pertinent measurement here was approximately 5,000 square feet; that it was never 2,000 square feet, even at the inception of the project; and that it did not increase to 7,000 square feet.

(e) *Respondent knew the statement was false.* The documentation, testimony and other evidence offered concerning the size of the residence ineluctably leads to this conclusion. Among other things, the Respondent received notification from the client in an email that established that the Complainants were generally satisfied with the square footage of around 5,300 that was presented to them, along with drawings illustrating that square footage. The Respondent further knowingly signed the permit application based on a little more than 5,600 square feet. The NEC concludes that Respondent's later statement that "an increase in size of the dwelling and associated Architectural Drawings from approximately 2,000 square feet to approximately 7,000 square feet" was knowingly false.

For the reasons stated above, the NEC finds that the all the elements to establish a violation of Rule 4.103 have been proven here.

The NEC concludes that the Complainants have met their burden to prove that the Respondent violated Rule 4.103.

Rule 4.201

Rule 4.201 states:

> Members shall not make misleading, deceptive, or false statements or claims about their professional qualifications, experience, or performance and shall accurately state the scope and nature of their responsibilities in connection with work for which they are claiming credit.

The Commentary to Rule 4.201 states:

> *This rule is meant to prevent Members from claiming or implying credit for work which they did not do, misleading others, and denying other participants in a project their proper share of credit.*

Rule 4.201 is intended to protect others from being misled by AIA members stating qualifications that they do not actually have or claiming credit to which they are not entitled.

In paragraph 188 of the Complaint, Complainants allege that Respondent violated Rule 4.201 when "the Respondent attempted to conceal what the Respondent and their Country A firm had done, by misrepresenting and suppressing pertinent facts and other information." When asked to be more specific, Complainants' counsel pointed to paragraph 14(iii) of the Complaint:

> Furthermore, when questioned during the trial [before the Country B Magistrates' Court] about their professional affiliations and whether any professional or ethical standards applied to them, Respondent testified that the Institute of Country B Architects (where they served as both a former president and at the time of the trial as the secretary) was merely a "boys club" and a "social club", and that their Code of Professional Conduct was a "joke".

The NEC, however, does not find that an omission regarding a professional membership in this case fell within the bounds of Rule 4.201. The Respondent was not required to disclose the Respondent's professional membership and did not mislead the Complainants by failing to disclose the Respondent's membership in the Country B Architects (or, for that matter, the AIA) to them. Moreover, the actual statements cited in paragraph 14(iii) of the Complaint in no way reflect "misleading, deceptive, or false statements or claims about [Respondent's] professional qualifications, experience, or performance," within the meaning of Rule 4.201.

Complainant's counsel also cited paragraph 6 of the Complaint to support Complainants' assertions of a violation of Rule 4.201:

> Thereafter, over the course of 2012 and 2013, we had several exchanges with Respondent and

> their attorney about the work that was invoiced for the building control phase. And we were subsequently served in April 2014, with a civil summons filed by the Respondent on behalf of the Respondent's Country B, ABC Architecture Firm. Essentially, the Respondent falsely alleged (without ever providing proof of same) that we had contracted for ABC Architecture Firm to design a 2,000 sq ft house, a few months later tripled the size of the house to 7,000 sq ft, and then breached our contract with ABC Architecture Firm by failing to pay for this alleged change in design.

The alleged discrepancies in size of project and invoicing fees are not relevant considerations as to the representations about the "scope and nature of [Respondent's] responsibilities in connection with work for which [the Respondent is] claiming credit" under this Rule.

The question here is whether Respondent could have violated Rule 4.201 by inaccurately stating—to the clients—the scope and nature of the Respondent's responsibilities in connection with the very services and work the Respondent performed for those clients. Rule 4.201, however, falls under the Code's Canon IV: Obligations to the Profession, rather than under Canon III: Obligations to the Client. Thus, in the most typical situation, the Rule is intended to preclude members from claiming professional credit to third parties for services they did not perform, in a way that fails to give appropriate credit to other members or design professionals who themselves were involved in the scope of professional services. Seen in this light, the evidence shows no conduct by Respondent that would have violated Rule 4.201.

The NEC concludes that the Complainants have not met their burden to prove that the Respondent violated Rule 4.201.

Penalty

Having found the Respondent violated Rules 3.201 and 4.103 of the AIA Code of Ethics, and taking into consideration the circumstances of the violation, the National Ethics Council imposes the penalty of Censure.

The Hearing Officer did not participate in the decision of this case, as provided in the Rules of Procedure.

December 16, 2019